Province of British Columbia
Ministry of Attorney General

PAROLE

EARNING THE PRIVILEGE

A Discussion Paper on Improving the Parole Process

MINISTRY OF ATTORNEY GENERAL
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Province of British Columbia

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April, 1988

My Fellow British Columbians,

In the fall of 1987, I spent two months travelling to over 25 communities throughout British Columbia to launch the Victim Assistance Program.

As I listened to people's stories about what had happened to them or to their family members and friends, it became increasingly obvious to me that they were expressing not only their distress and anger at the crime that was inflicted on them, but also their outrage with our justice system - a system which to them seemed to be both indifferent to the victim and incapable of dispensing justice in a way which made sense.

I have long been advocating some basic changes to our justice system. There needs to be a better balance between providing due and fair process for accused and convicted persons, and ensuring the protection of our communities. I must admit, however, that I was not prepared for the overall anger and frustration directed against our criminal justice system. As Attorney General I am convinced we must move quickly to assure our citizens that those responsible for law and justice have both the desire, and the ability, to make our justice system fair and effective.

I have already taken action to ensure victims are dealt with in a totally different way and last November I announced the creation of a Justice Reform Committee. This Committee will suggest how we can make the justice process more effective, less complex, and less costly. Its report will be ready later this year and I intend to move quickly to make those changes which lie within our power.

The one other area I wish to focus attention on is parole.

Let me be quite clear about where I stand. I believe in parole. I believe it is necessary and just to have a system which can provide hope and be an impetus for

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positive change to those who have been incarcerated. Let me be equally clear, however, that I believe some people especially those who have committed serious violent crimes should never receive parole no matter how well they behave in prison. The safety of the community must be the overriding factor in deciding whether to release an inmate on parole. I also insist that the intent of the judge's sentence be a strong factor in the consideration of whether parole is appropriate even before looking at whether the inmate has earned the right to be out.

I believe that all parole must be earned. By earned I do not think it is good enough simply to be a model inmate; rather I mean that the individual must have consistently worked to improve and change himself, and that there be documentable evidence that he has done so. Moreover, the offender must continue to earn the privilege of being on parole each and every day he is on parole. For me this involves such things as hard work, remorse for what has been done, and a tangible desire to make amends to the victim and to the community. I firmly believe that by putting the responsibility on offenders for earning their parole and trying to repair the harm they have done we are helping them to improve their self esteem. Only if these people are given serious opportunity to make amends can they truly hold their heads up and say that they have paid their debt.

I am releasing this discussion paper because I think we have an opportunity to make some fundamental changes in how parole is determined and administered. The jurisdictional power for parole belongs to the Federal Government. Even though we have a Provincial Parole Board which can deal with inmates serving sentences of under two years (therefore the less serious crimes), its authority is derived totally from the Parole Act (Canada). Changes in such things as eligibility and releasing criteria can only be made by the Federal government. I want to make strong representation to the Federal government to ensure that changes are made which address the fundamental concerns our citizens have with the parole process as it currently exists.

I am taking this opportunity to provide you with some background information about parole and to put forward some issues and suggestions about it. I encourage you to read

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it and think about what we should do to improve our parole system, and to share your thoughts and ideas with myself, and the Parliamentary Committee on Justice and Solicitor General in Ottawa.

In closing let me emphasize that the comments and recommendations made in this paper are not intended to suggest that parole officials are not already trying to address many of the issues raised. Nor am I suggesting that those responsible for making parole decisions, whether as Board Members or supervisors, are not genuinely committed to the safety of the public. What is needed, however, are changes both of substance and approach, which will tighten up the parole process and emphasize that it is a privilege which must be earned.

Brian R.D. Smith
Attorney General

Please write:

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P A R O L E

E A R N I N G T H E P R I V I L E G E

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INTRODUCTION

The purpose of the Paper is to encourage you to think about the whole matter of parole and to contribute your concerns, ideas and suggestions. The Province will be making a formal submission to the Government of Canada insisting that certain changes be made to the Parole Act (Canada) and its Regulations.

This Discussion Paper will attempt to give you some basic information about the parole process in Canada and British Columbia and to provide a framework to consider how we might improve our parole system.

PART A: The Parole Process - A Description

1. What Is Parole?

Parole is, quite simply, the process whereby an individual who has been sentenced to a term of incarceration is given conditional release into the community prior to the expiry date of his or her sentence. This release is not automatic - it is given as the result of specific deliberations by a group of individuals (Parole Boards) applying the criteria specified in the Parole Act (Canada) and its Regulations, and considering the merits of each case individually.

Since parole is not the only form of early release from prison it is, understandably, often confused with other release mechanisms. These other forms include:

- probation - this is actually a sentence by a court specifying a period of time to be served in the community (as opposed to jail) under the supervision of a probation officer.

- earned remission - this is the amount of time an inmate in custody will have his or her sentence reduced by for "good behaviour" while in prison (usually a maximum of one third of the sentence except for "lifers" who cannot earn any remission).

- mandatory supervision - inmates who are released from Federal Penitentiaries as a result of earned remission are required to be under the supervision of a parole officer, even though

they have not been paroled; it is possible to deny release to an inmate on mandatory supervision if there is strong evidence he/she is likely to be a real danger to the community.

- temporary absence - this is the release of an inmate from prison, prior to permanent release into the community for a short, specified time and purpose; it may be escorted or unescorted and has various conditions attached.

For the purposes of this Paper the only issue which will be dealt with is parole itself. However, the very existence of all these forms of early release indicates just how complex the whole system has become and how difficult it is for non justice professionals to understand it.

There are two forms of parole. These are:

- Day Parole - Inmates on day parole are allowed to work in the community but must live under supervision in a Federal/Provincial correctional centre or in an approved half-way house run by a community agency (e.g. John Howard Society). Inmates are eligible for day parole earlier than full parole.

- Full Parole - Inmates on full parole are free to live and work in the community but are required to report regularly to a parole officer (Federal inmates) or probation officer (Provincial inmates).

In our following description of parole we will try to avoid being overly technical and confusing. Although this means that we will simplify the description of parole by ignoring the numerous wrinkles, exceptions and special cases which exist. This will make the whole process easier to comprehend without causing any significant distortion in understanding how parole works.

2. How is Parole Organized?

The authority to release an inmate on parole who has been sentenced for a criminal offence stems from the Parole Act (Canada) which is Federal legislation. All parole decision making and supervision used to be the exclusive jurisdiction of the National Parole Board which is administered by the Solicitor General of Canada. In 1978, the Parole Act (Canada) was changed to allow Provinces to establish Provincial Parole Boards which could parole inmates sentenced under the Criminal Code of Canada but who were serving sentences in Provincial Correctional Institutions (i.e. not more than 2 years or those Federal inmates - usually women - transferred to Provincial institutions). Thus while the B.C. Board of Parole was created by the Province in 1979 it is still governed by the Parole Act (Canada) and its Regulations. Provinces can only legislate parole for persons convicted of violating a Provincial Statute, which excludes all criminal offences.

The following chart provides a summary explanation of how parole is organized and administered.

TABLE I
SUMMARY DESCRIPTION OF PAROLE

	National Parole Board (Federal Government)	B.C. Board of Parole (Provincial Government, but must conform to Federal Parole Act and regulations)
1. **Control of Parole Legislation**	Yes - through Parliament.	Only for persons sent to prison for a provincial, not a criminal, offence.
2. **Authority to Release**	Inmates in Federal Penitentiaries (sentence over 2 years).	Inmates in Provincial Correctional Centres.
3. **Eligibility Criteria for Consideration**	a) day parole* - generally six months or 1/6 of fixed term sentences (whichever is greater), except for lifers who must serve a minimum of 7-25 years in prison for 2nd degree murder and 25 years in prison for 1st degree murder. b) full parole* - generally 1/3 of fixed term sentences except for lifers who must serve from 10-25 years in prison as specified by the sentencing judge for 2nd degree murder, and a minimum of 25 years in prison for 1st degree murder.	a) day parole - 1/6 of fixed term sentence under two years (day parole is very rarely used by the Provincial Board) b) full parole - 1/3 of full sentence for those serving 3 months to 2 years.
4. **Reapplication Eligibility**	a) day parole-six months since last review date. b) full parole-six months since last review date.	a) two months since last review date. b) two months since last review date.
5. **Mandatory Supervision**	Yes	None
6. **Decision Making (granting, suspending, terminating)**	The National Parole Board (which consists of members appointed by the Federal Government from the community) with appropriate staff support.	The B.C. Board of Parole (which consists of members appointed by the Provincial Government from the community) with appropriate staff support.
7. **Supervision while on Parole**	Parole Officers of the Corrections Service of Canada or by professionals on contract from other jurisdictions/ agencies.	Probation Officers of the B.C. Corrections Branch, Ministry of Attorney General.

* there are some offences which have their own special eligibility criteria such as Dangerous Offenders.

3. How are Parole Decisions Made?

It is important to remember that parole is never given automatically. While an inmate may have the right to be considered for parole, it is the Parole Board which makes the decision as to whether parole will be granted.

The B.C. Board of Parole requires an inmate to apply for parole in order to be considered for it. The National Parole Board not only considers those who are eligible and have applied, but in numerous instances also automatically reviews an inmate's case at a certain point of time in his or her sentence to decide if parole should be granted, even though that individual has not applied for it.

Before any decision to grant or deny parole is made, the staff who serve the Board are required to gather detailed information about the case. This will include police reports, life history, medical and psychological reports, pre-sentence reports, etc. and should include a thorough investigation of the inmate's release plan and an assessment of the likelihood of success.

The Board, in making any decision as to whether to parole an inmate or not, weighs all it knows about the inmate against the following criteria laid down in the Parole Act.

"(1) The Board may

(a) grant parole to an inmate, subject to any terms or conditions it considers reasonable, if the Board considers that:

(i) in the case of a grant of parole other than day parole, the inmate has derived the maximum benefit from imprisonment;

(ii) the reform and rehabilitation of the inmate will be aided by the grant of parole, and

(iii) the release of the inmate on parole would not constitute an undue risk to society."

In it's most recent policy statement on release criteria, the National Parole Board has emphasized that the safety of the community must be the prime consideration in any decision as to whether a parole should be granted.

Every parole is a form of conditional release. That means the parolee is required to abide by certain conditions laid out by the Board when it grants the parole. Terms such as a requirement to refrain from any unlawful act and to report to the parole supervisor as directed are obviously a standard condition of each and every parole. The Board will also stipulate conditions which pertain directly to the inmate's individual problems (e.g. abstention of alcohol), past life style and the specific release plans that were presented and approved by the Board (e.g. to obtain and maintain employment or to take a training course).

As one would expect, it is this whole area of how decisions are made to release someone on parole which has received the most scrutiny and criticism. Our concerns and recommendations about this issue are discussed in detail in Part B of this Paper.

4. How are Parolees Monitored and Supervised?

Every parolee is monitored and supervised by a parole or probation officer, depending on whether he/she is a federal or provincial inmate. The job of the supervisor is to ensure:

- there is sufficient contact to determine if the parolee is adhering to the stated terms and conditions of the parole and that he/she is attempting to meet the objectives of the release plan.
- the parolee's behaviour does not appear to constitute a threat to individuals or property.
- the parolee knows that he/she is being closely monitored and that there will be immediate consequences if the conditions and objectives of the parole are not being lived up to.
- that regular progress reports noting the behaviour, progress and attitude of the parolee are prepared and submitted.
- the parolee receives feedback about his/her progress and to assist the parolee to live up to the conditions and objectives of the parole.
- immediate action is taken to correct inappropriate behaviour by the parolee, and to suspend the parolee and place him/her back in custody where there is unlawful behaviour or a willful failure to adhere to the terms of the release plan.

If a parole suspension is issued, the Board will hold a hearing to determine whether it should be reinstated or permanently terminated. The safety of the community is expected to be the overriding principal in making this decision. This area of parole has also been much criticized and is discussed in Part B.

PART B: Parole Issues - Problems and Solutions

In this part of the Discussion Paper we wish to identify some major concerns we have with parole as it currently exists and to suggest some ways of improving the overall parole process.

1. The Principles of Parole

If our parole system is going to be understandable and accountable to the public it first has to be clear what the basic principles behind parole are. These principles are required to establish clear guidelines and procedures which will ensure that those being considered for parole are appropriate in terms of the very reasons for having a parole system in the first place.

The Report of The Canadian Sentencing Commission (February 1987) studied the whole issue of early release and made a series of comprehensive recommendations. While it is not the purpose of this paper to discuss the Report's recommendations in detail we would like to comment on the Commission's recommendation with respect to full parole. We disagree with their recommendation that full parole be abolished. The Commission's main concern is that full parole undermines the whole intent of the sentence. We do agree with the Commission that it is critical that the intent of the judge's sentence not be ignored or trivialized in administering that sentence. It is our contention, however, that if Parole Boards have clear criteria, good information about the sentence, and communication with the sentencing judge where possible and appropriate, that the intent of sentence can be respected in a paroling process (see below). We believe that the public is far more likely to be at risk if most inmates are simply released into the community when they hit their expiry date (less any earned remission) rather than developing a realistic release plan and being under certain conditions and a degree of supervision. While there are certainly some strong reasons to be concerned about how well parole has served both the inmate and the community in the past, we think those concerns can be better addressed by reforming the parole process as opposed to simply abolishing it.

It is our contention that any articulation of the principles of parole must make reference to the following:

(a) **Risk to the Community** - The safety of the community must be the overriding factor when considering parole. It must be clear that if there is any reason to believe that the release of an individual is likely to place others at risk of violence, then parole will not, indeed cannot, be granted.

(b) **Intent of Sentence** - The parole process simply cannot ignore the intention of the court when it passed sentence. Those responsible for deciding who will be paroled must try and ascertain why the court handed down the sentence it did and the degree to which a decision to grant parole at any particular time is consistent with, or at least not a gross violation of that intent. Indeed, the criteria for parole eligibility should be seen to be realistic and not give an impression that sentenced offenders will generally serve only a small fraction of their prison sentence in jail itself. This is why we are recommending that the eligibility period for day parole be raised from one-sixth to one-third of the overall sentence.

(c) **Parole Must Be Earned** - All parole must be earned; it can never be assumed to be a right or an automatic entitlement. The behaviour of an inmate in a correctional institution should only be a relevant factor in the decision to grant parole to the extent that such behaviour reflects a real and demonstrable attempt by the inmate to improve himself and be productive. Inmates get earned remission for behaving well; they should not be given any reason to believe that parole is a reward for merely being manageable. It should exist to provide hope and an incentive to the offender to work hard to change and to avail him or her self of the opportunities and programs provided.

Legislative change should be made to the Parole Act (Canada) to give Parole Boards the authority to order parolees, under certain defined circumstances, to perform community service or to make compensation payments to their victims as a condition of parole, even though the Court may not have imposed such conditions as part of its sentence. We believe that this power would truly give offenders an opportunity to redress the harm they have done. It would also ensure that they continue to earn the privilege of being in the community on early release prior to the expiry of their prison term. Indeed the fundamental requirement should be that the parolee continues to earn the privilege of parole each and every day he or she is on parole.

The willingness of an imprisoned offender to try and make amends to the victim and to the community in a tangible way, is, we think, a fundamental step in that person's personal reformation. We believe that this form of reconciliation enables offenders to feel good about themselves and to develop their self esteem. Furthermore, we believe that part of this process involves taking the initiative to apply for parole rather than to be reviewed automatically. This puts the onus on the inmate to develop a strong release plan and to convince the Board that he is serious about living up to the terms of these plans.

(d) **The Role of the Victim** - The parole process must take the victim into account and consider what the impact of the parole might be on them. When there has been a compensation order to the victim made by the Court as part of its sentence, the inmate must indicate what he or she will do to meet those obligations before parole can be granted. As we have noted above there are occasions when we believe the Parole Board itself should be able to make victim compensation one of the conditions of parole even though the Court didn't order it.

This right, however, must be used cautiously and only in appropriate circumstances. This means ensuring that the parolee is employable and that

any amount ordered to be paid is realistic in terms of the parolee's potential income. Victims must also be consulted to determine if they in fact wish to receive any such compensation.

In the next section we will make some suggestions to ensure that the needs and feelings of the victim are taken into consideration at the time parole is being considered.

2. The Decision Making Process

No matter how good the principles of parole are, they mean very little if they cannot be translated into clear criteria and procedures for ensuring that those principles direct each and every decision. In defining such criteria and procedures we believe the following issues need to be addressed:

(a) **Eligibility Criteria** - The current day parole eligibility date of 6 months or one-sixth of the sentence term is simply too short. Having such a short period of time before an inmate can be released into the community not only undermines the intent of sentence but contributes to the public perception that the justice system is simply not serious about dealing with criminals. The one-sixth rule gives the appearance that the main concern of the system is to get most offenders back into the community after they have served a very small fraction of their prison sentence. It is our contention that the eligibility period for day parole be doubled, going from one-sixth to one-third of sentence. Moreover, in cases involving serious violent crime, the sentencing judge should be able to set an even higher period of eligibility for both day and full parole.

Similarly, one-third of the sentence is not lengthy enough for full parole eligibility where serious violent crime is concerned. It seems to make little sense that all inmates ("lifers", dangerous offenders and a few other categories excepted) have the same eligibility criteria for day parole and full parole even though their offences may be vastly different in degrees of seriousness. Why should someone who has been

guilty of a major violent crime be eligible for parole after the same proportion of time as someone who has been sentenced for theft or fraud? It is our position that the Parole Act (Canada), its Regulations and the Criminal Code of Canada be amended to deal realistically with the wide range of offences and offenders passing through the courts. As previously mentioned the sentencing judge should be able to specify the time to be served prior to parole eligibility for those guilty of serious, violent crimes. This is already the procedure for setting parole eligibility for those convicted of 2nd degree murder.

We are also concerned that the period of time specified before an offender can reapply for day or full parole be realistic. It is our intention to increase this period at least for federal inmates serving their sentence in provincial correctional institutions beyond the current 2 month requirement.

(b) **Intent of Sentence** - Although this topic was discussed earlier, it is important to note that there must be mechanisms for ensuring that the intent of the court in making the sentence is as evident as possible. In practical terms this means accessing court documents and using them at the time parole is being considered, especially where the crime was serious or the public is likely to fear for its safety. The measures discussed previously in this section would ensure that the eligibility criteria themselves are a better reflection of intent of sentence.

(c) **Giving the Victim a Voice** - As we noted in the section on principles, it is imperative that both the impact of the crime on the victim as well as the possible implications of the parole for the victim be considered as an integral part of the parole decision making process.

Any victim impact statements presented to the Court at the time of sentence should be included in the documentation given to Parole Boards during the case review. Furthermore, when the crime involved violence, the victim must be contacted, wherever possible, when the required

community investigation report is prepared and given an opportunity to make his or her views and concerns known to the Board. Victims should also be advised that they have the right to send a written submission themselves to the Board about the effect of the crime on their lives and their feelings about a possible parole for the offender.

In the section on Principles we have already stated our belief that compensation to the victim and community service should be considered as part of the conditions of parole wherever appropriate. This not only means ensuring that any Court orders for such are addressed as part of the parole but even giving Parole Boards the legislated authority to impose such obligations in appropriate circumstances on the offender as a condition of parole.

The victim also has the right to be protected from contact with the offender and if that is an expressed concern of the victim, avoidance of such contact should be a condition of the parole.

Lastly, victims of violent crime should, whenever possible, be notified of the decision made by the Parole Board and of any terms that relate to the victim directly (such as compensation or non contact).

3. Effective Supervision of Parolees

If the very concept of gradual, supervised release of offenders into the community is to have any meaning there must be effective supervision. Once the decision to release has been made this is clearly the most vulnerable part of the whole parole process. It is simply not possible to produce a parole system which will be totally error free. It is impossible to always predict human behaviour and it is unrealistic to expect that a parole supervisor can know everything a parolee is doing. But citizens do have a right to expect that the people who are responsible for supervising parolees are capable, clearly understand their role, and receive the support they need to be effective supervisors.

(a) **Helping vs. Control** - We believe that the primary role of the person supervising parole is to ensure that the conditions of the parole and the objectives of the release plan are met. If the supervisor can assist that process by developing a positive relationship with the parolee, so much the better. However, there should be absolutely no doubt in either the parolee's or the supervisor's mind that the uppermost purpose of the supervision is to ensure that the individual is not a threat to the community, and that immediate action will be taken to suspend the parole if that is the case.

(b) **Discretion** - The process of monitoring and supervising another human being's behaviour is not a simple black or white situation. Offenders who have been sentenced to prison are obviously not the easiest of persons to deal with in the first instance, and some of them may have very serious personal problems. Unfortunately it has to be expected that while on parole not every parolee will behave in a way which is ideal. The parole supervisor needs to have some room to make allowances and to wield both a carrot and a stick. This degree of discretion cannot, however, compromise the integrity or credibility of parole. Parolees who commit criminal acts or who violate parole

conditions specifically limiting certain actions (such as drinking when there is an abstinence clause) must be suspended. The primary supervision concern must be the safety of the community and if there is any doubt the community's needs have to take precedence over the parolee's.

SUMMARY

The Ministry of Attorney General is generally supportive of the concept of gradual, supervised release for most offenders. We view this approach as consistent with the public's need for protection. While there are clearly some inmates who should never be paroled, to have all inmates go directly from prison into the community on an unrestricted and unsupervised basis is not in the best interests of public security. Consequently we would argue against the abolition of parole.

If there is going to be a parole system, however, it must be both effective and responsive to contemporary attitudes about law and order. We have laid out some of our concerns and suggestions and the Attorney General will be making personal representation to the Government of Canada to reform the Parole Act and the administration of parole.

What Can You Do?

Parole is a very complex issue and in this paper we have only touched on a few basic points. We want to hear about your concerns and suggestions for parole. Please send any letters or submissions to:

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Legislative Buildings
Victoria, B.C.
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At this very time the Federal Parliamentary Committee on Justice and Solicitor General, is conducting a thorough review of corrections and parole. You might wish, therefore, to also express your concerns and ideas to that Committee by writing to:

Standing Committee on Justice and Solicitor General
House of Commons
Ottawa, Canada
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Your thoughts and suggestions will be helpful to the Attorney General in determining how British Columbians feel about the issue of parole and what specific recommendations should be made to the Government of Canada.